

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

ORIGINAL

77-7095

To Be argued by PAUL T. REPHEN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RICHARD D. FRIEDMAN, individually and on behalf of
the class comprising all persons who are owners of,
or are licensed to operate an automobile in the
State of New York and City of New York, and on be-
half of the class comprising all persons who have
received parking tickets and paid fines thereon under
the circumstances described herein for the period
July 1, 1970 to date hereof, within the City of New
York,

Plaintiffs-Appellants,

NICHOLAS A. ARENA, FRAN LEE, and HAROLD C. HARRISON,

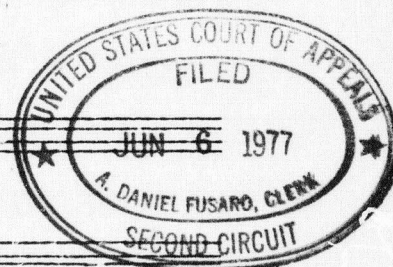
Intervening-Plaintiffs,

-against-

ABRAHAM D. BEAME, Mayor of the City of New York,
HARRISON J. GOLDIN, Comptroller of the City of New York,
ALEXANDER J. MAUTNER, Transportation Administrator of
the City of New York, THEODORE KARAGHEUZOFF, Commissioner
of Traffic of the City of New York and HARRY VICCOLA,
Director of the Parking Violations Bureau of the City of
New York, individually and in their respective capacities,

Defendants-Respondents.

APPELLEES' BRIEF



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UNITED STATES COURT OF APPEALS
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class comprising all persons who are owners of, or are
licensed to operate an automobile in the State of New
York and City of New York, and on behalf of the class
comprising all persons who have received parking tickets
and paid fines thereon under the circumstances described
herein for the period July 1, 1970 to date hereof, within
the City of New York,

Plaintiffs-Appellants,

NICHOLAS A. ARENA, FRAN LEE, and HAROLD C. HARRISON,

Intervening-Plaintiffs,

-against-

ABRAHAM D. BEAME, Mayor of the City of New York, HARRISON
J. GOLDIN, Comptroller of the City of New York, ALEXANDER
J. MAUTNER, Transportation Administrator of the City of
New York, THEODORE KARAGHEUZOFF, Commissioner of Traffic
of the City of New York and HARRY VICCOLA, Director of
the Parking Violations Bureau of the City of New York,
individually and in their respective capacities,

Defendants-Respondents.

APPELLEES' BRIEF

Preliminary Statement

In this action, commenced pursuant to 42 U.S.C. §§1981
and 1983, wherein plaintiffs challenge the constitutionality
of certain regulations and administrative orders of the New York
City Department of Traffic which restrict parking on some City
streets to vehicles operated by employees of the Federal, State
and City governments and vehicles bearing "DPL" or "FC" license
plates, and seek a permanent injunction enjoining the City Parking
Violations Bureau from prosecuting violations of such regulations

and fifteen million dollars damages, plaintiffs appeal from an order and judgment of the District Court for the Eastern District of New York (Weinstein, J.) which granted defendants' motion to dismiss.

Questions Presented

1. Do the traffic regulations being challenged in the instant case violate plaintiffs' due process rights or deny them equal protection of the law?

2. Does plaintiffs' State law claim of unlawful delegation present an issue which should here be decided under the court's pendent jurisdiction?

3. Do Sections 1642, subd. a of the Vehicle and Traffic Law and 2103, subd. 1, of the City Charter, which authorize the challenged traffic regulations, constitute an unlawful delegation of legislative authority?

4. Assuming, arguendo, that the instant complaint suffices to state a cause of action on behalf of any unnamed class member, should it nonetheless be dismissed?

5. Since plaintiffs' claims are or were the subject of State enforcement proceedings, under the principles of comity, should they be allowed to be the subject of litigation in federal court?

FACTS

Plaintiff Richard D. Friedman is duly licensed to operate a motor vehicle in this state (22-23)*. On three separate dates in January and February, 1976 plaintiff Friedman received parking summonses as a result of parking in restricted zones (23). On January 23, 1976, he received a parking summons for parking in a zone marked: "No Parking Except Authorized Vehicles of the Department of Immigration and Naturalization." On January 31, 1976, he received a parking summons for parking in a zone marked: "No Parking Except DPL Plates." Finally, on February 5, 1976, he received another summons for parking in a zone marked: "No Parking 8:00 A.M. to 6:00 P.M., Monday-Friday, Except Authorized Vehicles" (23).

Section 1642, subd. a, of the Vehicle and Traffic Law permits the New York City Council to adopt local laws regulating traffic, including parking, on New York City streets. Chapter 63-A of the New York City Charter establishes a Transportation Administration (New York City Charter, Section 2100 et seq.). Section 2103, subd. 1 of the Charter authorizes the Transportation Administration to adopt rules and regulations for the conduct of vehicular traffic in the City's streets as may as necessary.

Pursuant to this statutory authority the Department of Traffic, an agency of the Transportation Administration,

*Unless otherwise indicated, numbers in parentheses refer to the pages of the Appendix.

promulgated regulations 80(c) and 103 which prohibit parking in those areas designated by authorized signs (46).

On a limited number of City streets the Department of Traffic has restricted parking to employees of the Federal, State and City governments who use motor vehicles in the course of their duties and to automobiles bearing "DPL" or "FC" license plates (48-55). Among those agencies which have given authorized parking space are:

- (1) United States Department of Labor
- (2) United States Attorneys' Offices
- (3) Inspector General, New York City
Housing and Development Administration
- (4) District Attorneys' Offices
- (5) Personnel of State and Federal Courts
- (6) Department of Sanitation

A more complete listing of the agencies which have been granted authorized parking space is set forth at page 27 of the Appendix.

Mr. Friedman entered pleas of not guilty with the New York City Parking Violations Bureau, the City agency empowered to adjudicate parking violations, on each of the three summonses he received for parking in the restricted spaces, and has refused to pay the fines (23).

On or about September 8, 1976, Mr. Friedman was notified by the Parking Violations Bureau that he was being certified a "scofflaw" (8). As a result of such certification, the New York State Department of Motor Vehicles informed him that his automobile registration was not going to be renewed (8).

On October 13, 1976, Mr. Friedman commenced a class action suit in United States District Court for the Eastern District of New York on behalf of himself and all others who have received summonses for parking in restricted areas since 1970, seeking to have the traffic regulations and orders granting the government agencies and diplomats special parking rights declared unconstitutional (5-36). Mr. Friedman also seeks to enjoin the Parking Violations Bureau from enforcing such regulations, and asks that plaintiffs as a class be granted fifteen million dollars damages as a result of paying allegedly illegal fines for parking in such restricted areas (35-36).

On January 17, 1977, Judge Weinstein granted defendants' motion to dismiss the action (3-4).

Opinion Below

In dismissing the action, Judge Weinstein stated:

"There are undoubtedly instances where city employees and other special groups abuse special parking privileges for their own convenience, rather than for emergency services to the public. These abuses raise political problems not warranting a declaration of unconstitutionality of the applicable statutes and administrative system for regulating parking in the city." (1).

Relevant Statutes

Vehicle and Traffic Law, Section 1642, subd. a(2)

§1642. Additional traffic regulations in cities having a population in excess of one million

(a) In addition to the other powers granted by this article, the legislative body of any city having a population in excess of one million, may by local law, ordinance, order, rule, regulation or health code provision prohibit, restrict or regulate traffic on or pedestrian use of any highway (which term, for the purposes of this section, shall include any private road open to public motor vehicle traffic) in such city. The provisions of section sixteen hundred shall be applicable to such local laws, ordinances, orders, rules, regulation, and health code provisions, provided, however that such local laws, ordinances, orders, rules, regulations and health code provisions shall supersede the provisions of this chapter where inconsistent or in conflict with respect to the following enumerated subjects:

* * * *

2. Parking, standing, stopping and backing of vehicles.

Section 2103, subd. 1 of the City Charter

§2103. Functions of the [transportation] administration.--Except as otherwise provided by law, the administration shall perform all those functions and operations of the city of New York relating to transportation.

1. Traffic. With respect to traffic, the administration shall have the following functions: (a) to make such rules and regulations for the conduct of vehicular and pedestrian traffic in the city, and in the streets, squares, avenues, highways and parkways in the city as may be necessary, which rules and regulations shall not become effective until filed with the city clerk and published in THE CITY RECORD ***"

* * *

POINT I

THE TRAFFIC REGULATIONS BEING
CHALLENGED IN THE INSTANT CASE
ARE NOT VIOLATIVE OF PLAINTIFFS'
DUE PROCESS RIGHTS, NOR DO THEY
DENY THEM EQUAL PROTECTION OF
THE LAW.

(1)

Appellants assert that the traffic regulations which restrict parking on a number of City streets to employees of certain governmental agencies and vehicles bearing "DPL" or "FC" license plates constitutes a violation of their substantive due process rights (Appellants' brief pgs. 13-25). For at least the last forty years, federal courts have taken the view that it is for the legislature or other rule making body to determine the wisdom or utility of any legislation or rules. See Ferguson v. Skrupa, 372 U.S. 726, 728-729 (1963); Williamson v. Lee Optical Co., 348 U.S. 483, 487 (1955); Railway Express Agency, Inc. v. New York, 336 U.S. 106, 109 (1949). The courts will not weigh the evidence on a substantive due process claim in order to determine whether the challenged regulation is sound or appropriate. Railway Express Agency, Inc. v. New York, supra at p. 109.

In Railway Express Agency, Inc., which concerned the constitutionality of a New York City traffic regulation, the Court stated at p. 109:

"We would be trespassing on one of the most intensely local and specialized of all municipal problems if we held that this regulation (which prohibited advertising to be displayed on any vehicle, unless the vehicles were engaged in the usual business of the owner and not used mainly for advertising) had no relation to the traffic problem of New York City. It is the judgment of the local authorities that it does have such a relation. And nothing has been advanced which shows that to be palpably false."

If the challenged regulation bears some rational relationship to the legitimate function of New York City government, it must be sustained.

We submit that it cannot be seriously argued that by restricting parking on a limited number of city streets to vehicles operated by employees of the Federal, City and State governments, the Transportation Administration has committed an irrational act which bears no relationship to its legitimate function. Obviously, anyone living or working in New York City is aware of the terrible traffic problem in the City. It is also clear that very often, government buildings are located in highly congested portions of the City, especially in lower Manhattan and downtown Brooklyn. Accordingly, government employees who use either government cars or their own cars in the course of their employment would be spending an inordinate amount of working time seeking parking space unless the City made parking available to them.

The procedure used by the Department of Traffic in deciding which organizations will get special curbside parking

privileges and the amount of space to be granted to them is set forth in the affidavit of defendant Traffic Commissioner Theodore Karagheuzoff, made in support of defendants' motion to dismiss (42-55).

In order for a governmental agency to acquire special curbside parking space, it is required to demonstrate to the Department of Traffic that individual members of the government agency involved must, on a regular basis, use a vehicle in the normal course of their business. Furthermore, it must be shown that these individuals are required to regularly conduct their business for short periods of time in government buildings located in congested portions of the City, and then drive to other portions of the City or surrounding areas (49). Thus, it is not sufficient that the agency requesting authorized parking merely indicate that it will be used by their employees.

When the Traffic Department determines that a request demonstrates a need as described above, a Department of Traffic inspector will visit the location where the authorized parking has been requested (51-52). The inspector will determine whether or not the request for restricted parking rights would have an adverse effect on the traffic flow and curb operations in the area where the restrictions are sought (52). The inspector will also determine whether the requested rights would conflict with the parking needs of other agencies which qualify for special consideration (52). Upon the receipt of the investigator's report, the Department of Traffic may grant the request, modify it or deny it (52).

Quite often, the Department of Traffic, when granting special parking space, places the parking area at a location different than the one requested by the agency, and authorizes fewer parking spaces than had been requested. (53).

When a restricted parking space is established, the Department of Traffic files an administrative order for the establishment of a restricted parking area (53). The order describes, in great detail, the nature and location of the restricted parking area (53). In its notification of approval to the agency requesting the space, the Traffic Department specifies the number of spaces which have been set aside and describes their location (54). Each agency receiving such authorization has the responsibility for determining which of its employees will have the opportunity of availing themselves of the parking spaces.

The Department of Traffic is hardly in a position to determine which individual employees of an agency are best qualified to make use of the parking space made available to a particular agency. That determination can best be made by the agencies' administrators who are most familiar with the fluctuating and conflicting needs of their organization. It must be assumed that a vast majority of agencies which are granted parking rights are using them for the purposes for which they were intended.

The reasonableness of this traffic procedure can hardly be questioned. Parking space is not being made available to individuals in their private capacity, as plaintiffs' conclusory allegations assert, but rather, only to agencies who

have employees who use vehicles in the course of their duties. The list of agencies, set forth at page 27 of the Appendix, which have received parking space are agencies which clearly have employees who use motor vehicles in the course of their employment.

Obviously, it is in everyone's interest that government employees devote their time to the carrying out of their assigned duties. It is equally obvious that a government employee who regularly spends substantial amounts of time in search of a parking space is not efficiently performing his duties. Accordingly, the granting of parking space to some governmental agencies, while understandably irritating and inconvenient to some private individuals, is, on the whole, beneficial to the community in general.

It is incomprehensible to us how plaintiffs can argue that the setting aside of established areas where only cars owned by foreign diplomats bearing "DPL" or "FC" license plates can park is unreasonable. These areas were established as a result of difficulties encountered in enforcing parking restrictions against members of the diplomatic community. The areas surrounding foreign missions and consulates often suffer severe traffic congestion as a result of illegal parking by cars used by foreign diplomats (51). Since these vehicles are immune from criminal and administrative sanctions against illegal parking, the Department of Traffic had to find another method of preventing them from parking illegally. It is the Traffic Department's opinion that that goal could be best achieved by setting aside available parking areas near foreign missions and con-

sultates for use by diplomats. Accordingly, such areas have been set aside, along major avenues where the parked vehicles won't interfere with the traffic flow (51).

Despite plaintiffs' argument, it appears that the gravamen of their complaint is not directed towards the rationality of the underlying reasons for the Department of Traffic's policy on restricted parking, but rather, towards alleged abuse of the privileges by the agencies receiving them (Appellants' brief pags. 16-20). In the first place, plaintiffs' have failed to advance any evidence, other than conclusory allegations, which would indicate that there is widespread abuse of the restricted parking privileges. Moreover, if such abuse exists, the proper redress is available to plaintiffs through the normal political channels available to everyone. That is what Judge Weinstein meant when he dismissed the action on the grounds that the case presented questions, "political in nature" (4). Plaintiffs' should not seek to correct the alleged abuse by bringing frivolous constitutional challenges in federal court .

(2)

The instant case provides another example to support Justice Holmes' observation that it is usually the last resort of constitutional argument to make an equal protection claim. Buck v. Bell, 274 U.S. 200, 208 (1927). On numerous occasions the United States Supreme Court has held that the Fourteenth Amendment grants the states wide discretion in enacting laws

which affect some groups of citizens differently than others. Equal protection is denied only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. Jefferson v. Hackney Commissioner of Public Welfare, 406 U.S. 535 (1972); McGowan v. Maryland, 366 U.S. 420 (1961); Ferguson v. Skrupa, *supra*,; Williamson v. Lee Optical Co., *supra*,; Railway Express Agency, Inc. v. New York, *supra*,; Kotch v. Board of River Port Pilot Commissioners, 330 U.S. 552 (1947). A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. McGowan v. Maryland, *supra*, at p. 426, Tigner v. Texas, 310 U.S. 141 (1940).

As set forth above, the limited discrimination which arises as a result of the traffic regulations is a rational exercise of governmental powers. Since the discrimination in neither irrational nor invidious, plaintiffs have not been denied equal protection of the law.

POINT II

IN VIEW OF THE PRE-TRIAL DISMISSAL OF PLAINTIFF'S FEDERAL CLAIM, HIS PENDENT STATE LAW CLAIM SHOULD LIKEWISE BE DISMISSED. NEITHER SECTION 1642 OF THE VEHICLE AND TRAFFIC LAW, NOR SECTION 2103 OF THE CITY CHARTER, WHICH AUTHORIZE THE TRAFFIC REGULATIONS IN QUESTION, CONSTITUTE AN UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY.

(1)

Plaintiff concedes that the issue of unlawful delegation tendered by him is a question of State not Federal law (Brief, p. 36). However, he urges that it be reached and decided under the Court's "pendent" jurisdiction. See United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966); see, also, Rosado v. Wyman, 397 U.S. 397, 402-405 (1970). We brief below the merits of this issue, but we would urge that, as we believe plaintiff's federal claim was properly dismissed prior to trial, his state claim should not be reached. See United Mine Workers of America v. Gibbs, supra, 383 U.S. at 726; T.B. Harms, Co. v. Eliscu, 339 F. 2d 823, 828-829 (2d Cir., 1965), cert. denied, 381 U.S. 915 (1965).

(2)

It has long been recognized that a legislative body may, by statutory authority, confer upon a subordinate public board or agency the power to adopt rules and regulations reasonably adapted to fulfilling the purposes for which the agency

was created. Darweger v. Staats, 267 N.Y. 290, 306 (1935); Cherubino v. Meenan, 253 N.Y. 462 (1930); People v. Malmud, 4 A.D. 86, 91-92 (2d Dept., 1957). The courts of New York have consistently upheld the power of the City to adopt traffic regulations. Cherubino v. Meenan, supra,; People v. Rubin, 284 N.Y. 392 (1940); People v. Malmud, supra,; Tamburrino v. Sterrick Delivery Corporation, 241 App. Div. 221 (1st Dept., 1934).

In Cherubino v. Meenan, supra, the Court of Appeals upheld the validity of a New York City traffic regulation adopted under a statute almost identical to section 2103, subd. 1 of the City Charter. At issue in that case was former Section 315 of the City Charter which authorized the Police Commissioner to "make such rules and regulations for the conduct of vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary" 250 N.Y. at 464.

The court held at page 466 that:

"The Legislature may confer such power (to make traffic regulations) upon the Police Commissioner, provided the rule is reasonable, the same as it has done in conferring like power upon the health department, building department, or the Board of Alderman *** It may delegate its inherent power over these local matters to that instrumentality in the City government which it considers to be the most efficient and appropriate."

So long as the rules promulgated are reasonable, the grant of power authorizing their promulgation is not an improper

delegation of legislative authority within the meaning of the state constitutional prohibition against delegating legislative authority. See Matter of City of Utica v. Water Pollution Control Board, 5 NY 2d 164 (1959); see also Mandel v. Board of Regents, 250 N.Y. 173 (1928); Matter Kings County Lighting Co. v. Maltbie, 244 AD 475 (3rd Dept., 1935).

As has been demonstrated in Point I of this brief, the traffic regulations involved in the instant case are a reasonable and proper exercise of municipal power. Accordingly, it may not be argued that they represent an improper delegation of legislative authority.

Although the complaint does not attack the constitutionality of Section 1642 of the Vehicles and Traffic Law, plaintiffs assert in their brief that that section also constitutes an improper delegation of legislative authority (Appellant's Brief, p. 25). In Fieldston Property Owner's Assoc., Inc. v. City of New York, 44 Misc. 2d 850 (Sup. Ct., Bx. Co., 1964), aff'd 24 AD 2d 556 (1st Dept., 1965), rev'd on other grounds 16 NY 2d 267 (1965), it was held that Section 1642 did not represent an invalid delegation of legislative power.

Plaintiffs also assert that it is improper for the Transportation Administration to both prescribe the traffic rules and regulations and set the fines and conduct the investigations of parking violations (Appellants' brief, p. 33). Although plaintiffs cite no case law to support their argument,

it need only be pointed out that the Parking Violations Bureau has no part in devising or promulgating traffic regulations. The Bureau merely adjudicates charged violations of those regulations. The Parking Violations Bureau was made a part of the Transportation Administration only for the purposes of administrative convenience.

In addition, plaintiffs incorrectly assert that the Transportation Administrator improperly sub-delegated the rule making power to the Traffic Department, and that the Traffic Department improperly delegated a portion of that power to the agencies which have been granted restricted parking privileges (Appellants' brief, pgs. 32-33).

The Transportation Administration has not delegated any authority to the Traffic Department. The Transportation Administration is comprised of a number of constituent agencies including the Department Highways, Traffic, and Marine and Aviation. When the City Council, in adopting Section 2103, subd. 1 of the City Charter, authorized the Transportation Administration to make traffic regulations, it was obviously intended that the function be carried out in the first instance by the Department of Traffic.

In any event, plaintiffs cite no case which requires public officers to set standards when they delegate their powers to subordinates.

In Matter of Rockland County Anti-Reservoir Association v. Duryea, 282 App. Div. 457 (3rd Dept., 1953), the court stated at p. 464:

"No invalid delegation of legislative authority is involved in a statute authorizing a department head or other executive officer to delegate his powers to a substitute. We are not here concerned with the substantive standards of decision prescribed by the legislature--they are not attacked as being too vague or in any other respect inadequate (Packer Collegiate Inst. v. University of the State of N.Y., 298 N.Y. 184). We are here concerned only with the selection of the person or persons to whom the power of decision is to be entrusted. The legislature may constitutionally vest the power of decision, in the first instance, in the holders of designated offices and then authorize them to redelegate or subdelegate the power to other officers or employees to be selected by them. The question of whether a statute authorizes the delegation of the power of decision may sometimes involve a difficult question of statutory construction (citation omitted), but no constitutional question is involved." (Emphasis added.)

See also, Matter of Elite Dairy Products v. Ten Eyck, 271 N.Y. 488, 496-497 (1952); Matter of Weekes v. O'Connell, 304 N.Y. 259, 265 (1952). Accordingly, the question of standards is a constitutional question which arises only in the context of a legislative delegation of authority, and not in a situation where an officer or agency delegates a portion of its authority to a subordinate officer or agency.

Finally, it is absurd to argue that the Traffic Department delegated any of its authority to the organizations receiving special parking privileges. The Traffic Department has the authority to grant parking space to public agencies when need is shown. For the reasons set forth in Point I of our brief,

only the agencies receiving the parking rights are in a position to determine which of their individual employees shall utilize the space. Obviously, the individual agencies' determinations do not involve the exercise of delegated power received from the Traffic Department.

POINT III

ASSUMING, ARGUENDO, THAT THE INSTANT COMPLAINT SUFFICES TO STATE A CAUSE OF ACTION ON BEHALF OF ANY UNNAMED CLASS MEMBER, IT SHOULD NONETHELESS BE DISMISSED.

In his complaint the named plaintiff, suing on behalf of two classes of individuals, who is the only party who has here appealed, states that he is an attorney (A20). He is also the attorney for himself and the classes he purports to represent. As to one of the two classes, those persons who are owners of or are licensed to operate automobiles in the City and State of New York, we would concede that an action such as this might properly be maintained as a class action. However, we believe that, as plaintiff is both the only named plaintiff still in this case and the attorney who appears for the class, this action should not be allowed to be maintained as a class action by plaintiff. In addition, since in this proceeding plaintiff, in his individual capacity, seeks to collaterally avoid already commenced State proceedings against him, we would

urge that he may not maintain this action even in his individual capacity.

(1)

Given the fact that Judge Weinstein has certified this action as a proper class action, it may well be that the fact plaintiff himself (or even the class of alleged violators whom he seeks to represent) may not be entitled to any relief herein (see infra) would not bar proper class relief. Cf. Franks v. Bowman Transportation Co., 424 U.S. 747, 752-757 (1976) *. However, based on the fact that plaintiff is both the sole named plaintiff remaining in this action and the attorney of record in it, we believe he should not be allowed to maintain it as a class action. See Cotchett v. Avis Rent A Car System, Inc., 56 F.R.D. 549, 554 (S.D.N.Y. 1972); see, also, Graybeal v. American Savings & Loan Ass'n, 59 F.R.D. 7, 13-14 (D.C.D. 1973).

We note that at the time Judge Weinstein certified this as a proper class action, there were intervenor plaintiffs, but such intervenors, not having appealed, are now out of the case. Under these circumstances, should there here be a remand for any purpose, that remand should be accompanied by a direction

*We confess to uncertainty as to the precise reach of this part of the Franks v. Bowman holding. There, it appears, the petitioner Lee had once had a proper claim of unlawful hiring discrimination but it was rendered moot prior to his commencement of suit (see 495 F. 2d 398, at 406-407). Lee also had at the time of class certification a triable claim that he was discharged for race (id.). Here, in contrast, we would urge that the named plaintiff never had a valid claim for the relief which he here seeks (see infra). We would urge that on this ground as well he should be held an improper class representative.

that this named plaintiff not be allowed to maintain this action as a class action.

(2)

With respect to the claims of plaintiff individually and of the class of alleged violators he seeks to represent, we submit that all such claims should be held barred by the fact that all such claims are or were the subject of State enforcement proceedings and under principles of comity should not be allowed to be the subject of litigation in the federal courts. Cf. Juidice v. Vail, ___ U.S. ___, 45 U.S.L.W. 4269 (March 22, 1977); Rizzo v. Goode, 423 U.S. 362, 380 (1976); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975); Younger v. Harris, 401 U.S. 37 (1971); Anonymous v. Association of the Bar of the City of New York, 515 F. 2d 427 (2d Cir. 1975); Thistlethwaite v. City of New York, 497 F. 2d 339 (2d Cir., 1974) cert. denied 419 U.S. 1093 (1974); Taylor v. New York City Transit Auth., 433 F. 2d 665, 668 (2d Cir. 1970).

The New York City Parking Violations Bureau was established to fulfill a State adjudicatory function. See Matter of Rosenthal v. Hartnett, 36 NY 2d 269 (1975). And, under the governing legislation, not only are alleged violators afforded a hearing, but also they may take an administrative appeal to the Appeals Board, which has power to review both the facts and the law. See N.Y.C. Administrative Code §883a-8.0, subd. b; see, also McKinney's Vehicle & Traffic Law §242(2). Under the State

scheme, which we believe is entitled to deference (see, e.g., Taylor v. New York City Transit Auth., supra), court review is available only following an appeal to the Appeals Board. See Administrative Code §883a-9.0; Vehicle and Traffic Law §243. That Board could have heard and determined plaintiff's challenge to the lawfulness of the regulations here challenged. Instead, plaintiff here seeks to avoid that proper procedure and involve the federal courts in an unseemly interference with State administration of traffic laws.

We concede that members of the class of owners and operators whom plaintiff seeks to represent might properly bring such a challenge. But, under controlling principles of comity, plaintiff and the class of alleged violators should not be allowed to.

CONCLUSION

THE JUDGMENT OF THE COURT BELOW SHOULD BE AFFIRMED,
WITH COSTS.

Dated: May 30, 1977

Respectfully submitted,

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Attorney for Appellees

L. KEVIN SHERIDAN,
PAUL T. REPHEN,
Of Counsel.

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

being duly sworn, says, that on the 6 day of JUNE, 1977
 at No. 655 MADISON AVE in the Borough of MAN'H in The City of New York, he served three copies
 of the annexed APP BRIEF upon FRIEDMAN, FRIEDMAN, etc. Esq.,
 the attorney for the PLTFFS - APPLTS in the within entitled action by delivering
 three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and
 leaving the same with him.

Sworn to before me, this 6day of JUNE, 1977

Brian Sugden
 BRUCE S. GARNER
 Commissioner of Deeds
 City of New York No. 4-1786
 Commission Expires May 1, 1978
Bruce Garner